be not by virtue of any statute that we are aware of, but by force of the common law, for it is a general principle that municipal corporations are not liable to private actions for omissions or neglect in the performance of a corporate duty imposed upon them by law, or for that of their servants engaged therein, when such corporations derived no benefit therefrom in their corporate capacity, unless such action is given by statute. Oliver *v.* Worcester, 102 Mass. 489; Clark *v.* Waltham, 128 Mass. 567; Steele *v.* Boston, 128 Mass. 583; Curran *v.* Boston, 151 Mass. 505; Hayes *v.* Oshkosh, 33 Wis. 314; Wixon *v.* Newport, 13 R. I. 454; Dodge *v.* Granger, 17 R. I. 664. The city of Providence, for aught that appears, seems to have been in the discharge of a governmental power, engaged in the performance of a public service, in which it had no particular interest, and from which it derived no special benefit or advantage in its corporate capacity, but which it is bound to see performed in pursuance of a duty imposed by law for the general welfare of the inhabitants, or of the community; that the members of the park department, like those of the fire department, although appointed by the city corporation, are not, when acting in the discharge of their duties, servants, or agents in the employment of the city for whose conduct the city can be held liable; but they act rather as public officers, or officers of the city charged with a public service, for whose negligence or misconduct in the discharge of official duty no action will lie against the city, unless expressly given; and hence the maxim respondeat superior has no application.' "

Nuisances—Liability for Nuisance Continued by Lessee or Contractor.—In Fagan *v.* Silver, 188 Pac. 900, 901, the Supreme Court of Montana held that, one who erects a nuisance on his premises cannot escape liability by leasing the same, and the owner of a stone quarry and crusher, constituting a nuisance, is liable for damage to adjoining property caused by the operation of the quarry by an independent contractor. The court said:

"The undisputed testimony is that appellant was the sole owner of the lots on which the quarry was situated, and of the crusher, elevator, bins and other machinery used, and that he placed the plant in position and condition to be operated and thereupon turned it over to Mackey under an agreement whereby Mackey was to conduct all operations and deliver the crushed rock in the bins, for the use and benefit of appellant, at a stipulated price per yard. Appellant personally removed the crushed rock from the bins, and was therefore frequently in the vicinity of the plant while in operation, and had operated it himself some two or three years before in approximately the same position and with like results. There is no evidence in the record as to any agreement, or as to the manner in which Mackey should conduct his operations, or as to what steps, if any, he was

to take for the protection of adjoining property; however, the testimony on behalf of Silver and Mackey jointly tends to show that all precautions possible in the then condition of the plant were taken.

"Respondent's testimony shows that, in spite of such precautions, rocks did escape and were thrown against his house, the concussion from blasting was so violent as to shake the house, and that dust from the crusher and elevator entered in such quantities as to render it unfit for habitation. Such evidence clearly established the maintenance of a nuisance. Longtin *v.* Persell, 30 Mont., 306, 76 Pac., 699, 65 L. R. A. 655, 104 Am. St. Rep. 723, 2 Ann. Cas. 198.

"If we consider the facts as applying to the relation of landlord and tenant, appellant cannot escape liability, for the following rules would apply: 'One who erects a nuisance on his premises cannot escape liability by leasing the same, and his liability extends to the continuance of the nuisance after the lease goes into effect.' Anderson *v.* Dickie, 26 How. Prac., N. Y., 105; Robinson *v.* Smith, 7 N. Y. Supp., 38; McCarrier *v.* Hollister, 15 S. D. 366, 89 N. W. 862, 91 Am. St. Rep. 695. 'Where there has been a nuisance of continued existence upon demised premises, the lessor and the lessee may both be liable for the damages resulting therefrom —the lessee in the actual occupation of the premises, if he continues the nuisance after notice of its existence and request to abate it; and the lessor if he first created it and then demised the premises with the nuisance upon them, and at the time of the damage resulting therefrom is receiving a benefit therefrom by way of rent or otherwise.' Jones on Landlord and Tenant, sec. 603.

"On the other hand, if we take the view that Mackey was an independent contractor, it is equally true that appellant cannot escape liability. While the case of Holter Hardware Co. *v.* Western Mortgage Co. (51 Mont., 94, 149 Pac., 489) L. R. A. 1915F, 835, was an action for damages, the principle involved is the same, and the rule there laid down is controlling in this case. There damages resulted from debris, which the contractor had failed to remove, being carried by a high wind onto adjacent property. The owner of the building from which the debris came sought to evade liability on the ground that the damage was caused by the negligence of an independent contractor, and, in disposing of the matter, this court said: 'The contention that Groseclose was solely responsible, upon the theory that he was an independent contractor and created the condition which resulted in the accident, is without merit for two reasons: In the first place, the contract did not impose upon him the duty to remove the debris from the skylight, or to leave the building in a safe condition. By not imposing this duty upon him, Kleinschmidt, the manager, became responsible for the performance of it. Negligence in this behalf was chargeable to him and the corporation. In the second place, the corporation, the owner of the property, in arranging

to have repairs done upon it, the installment of which would probably result in creating a condition dangerous to neighboring property owners, was under obligation to provide that reasonable care should be taken to obviate the probable consequences. As was pointed out in Railroad Co. *v.* Morey, 47 Ohio St. 207, 24 N. E. 269, 7 L. R. A. 701, a proprietor's liability "is based upon the principal that he cannot set in operation causes dangerous to the person or property of others, without taking reasonable precautions to anticipate, obviate, and prevent these probable consequences." Under this rule, an employer may not divest himself of the primary duty he owes to other members of the community by contracting with others for the performance of work, the necessary or probable result of which is injury to third persons.' "